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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,032	05/25/2005	Gilles Boucher	06670/0202293-US0	9371

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EXAMINER

BASICHAS, ALFRED

ART UNIT	PAPER NUMBER
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3749

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/520,032

Applicant(s)

BOUCHER, GILLES

Examiner

Alfred Basichas

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5, 7-11, and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Patenaude (4,867,050), which shows all of the claimed limitations including, among other things,

1. A barbecue cooking device comprising: an inverted frustum casing 51,59 of a given height, having a base wall 44,60, an open top (see at least fig. 1) and a slanted side wall section 59 extending from the base wall to the top and having an inner surface made of a material capable of reflecting radiant energy (practically any material is capable of reflecting some amount of radiant energy, not the least of which is metal, ceramic, etc.); a grill 33 mountable on the open top; a cup-shaped burner 9,14 with a bottom wall 18,21 and a side wall section 17, the burner comprising: a combustion chamber 14 in an upper portion thereof for burning a combustible material 9, thereby emitting thermal energy; an air chamber 19 located beneath the combustion chamber, the air chamber having an air intake 23 for receiving air; and a diffuser plate 18 separating the combustion chamber and the air chamber; and a blower 26, operatively connected to the air intake of the air chamber to provide forced-air to the air chamber (see at least fig. 1); the barbecue cooking device being characterized in that: the side wall section of the casing extends at an angle ranging from about 135 degrees to about 110 degrees (see at least fig. 1) with respect to the base wall of the casing; the burner is located inside the casing with said side wall section of the burner spanning the height of the casing such that most of the thermal energy emitted by the combustion chamber radiate radially towards the slanted side wall section of the casing where it is reflected towards the grill mounted on the top of the casing (see at least fig. 1); and the blower is part of a ventilation system that further comprises: a pressurized air chamber 25 located downstream of the blower, said pressurized air chamber having an outlet end distal from the blower; and an air intake tube 20 having an open top end secured to the air intake of the air chamber; and an open bottom end adapted to be connected to the outlet end of the pressurized air chamber (see at least fig. 1).

2. The barbecue cooking device according to claim 1, characterized in that said inverted frustum casing has an inverted pyramidal shape (see at least fig. 1).

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3. The barbecue cooking device as claimed in claim 2, characterized in that the burner has a generally tubular shape with a round bottom wall (see at least fig. 1).
5. The barbecue cooking device according to claim 1, characterized in that the base wall of the casing has given surface area and the bottom wall of the burner covers more than 50% of said surface area (see at least fig. 1).
7. The barbecue cooking device according to claim 1, characterized in that it comprises a heat deflecting shield 35,44 mountable beneath the grill on top of the burner for defeating flames emitted from the burner.
8. The barbecue cooking device according to claim 7, characterized in that the deflecting shield is provided with slits 38.
9. The barbecue cooking device according to claim 8, wherein the grill has a given surface area and the barbecue is characterized in that the deflecting shield is sized to cover substantially all of said surface area of the grill, for diffusing the thermal energy reflected towards the grill (see at least fig. 1).
10. The barbecue cooking device according to claim 9, characterized in that the deflecting shield has a central portion free of said slits, and a peripheral portion having a series of longitudinal slits, the central portion being located on top of the burner when the shield is mounted beneath the grill (see at least figs. 1,2).
11. The barbecue cooking device according to claim 10, wherein the grill comprises a series of longitudinal slots, the longitudinal slits of the shield being in a staggered arrangement with respect to the longitudinal slots of the deflecting shield (see at least fig. 2).
13. The barbecue cooking device according to claim 1, characterized in that it comprises means for cooling the slanted wall section 15,50,51.
14. The barbecue cooking device according to claim 13, characterized in that the cooling means comprises an air inlet located in a lower portion of the slanted wall section for the allowing air to enter into the casing and an air outlet located in an upper portion of the slanted wall section for allowing air to exit the casing, thereby allowing a flow of air that cools the slanted wall section (see at least fig. 1).
15. The barbecue cooking apparatus according to claim 14, characterized in that the air inlet and the air outlet consist of a plurality of openings (see at least fig. 1) provided in the slanted side wall.
16. The barbecue cooking device according to claim 2, characterized in that the base wall of the casing has given surface area and the bottom wall of the burner covers from than 50% of said surface area (see at least fig. 1).
17. The barbecue cooking device according to claim 3, characterized in that the base wall of the casing has given surface area and the bottom wall of the burner covers from than 50% of said surface area (see at least fig. 1).
18. The barbecue cooking device according to claim 4, characterized in that the base wall of the casing has given surface area and the bottom wall of the burner covers from than 50% of said surface area (see at least fig. 1).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over

Patenaude (4,867,050), which discloses substantially all of the claimed limitations, but does not specifically recite,

4. The barbecue cooking device as claimed in claim 2, characterized in that the burner has generally rectangular shape with a round bottom wall.

The claimed shape is an obvious modification based on design choice, and depends on spatial considerations. In view of the absence of criticality for this particular design, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate it into the invention disclosed by Patenaude, so as to provide for spatial considerations.

6. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Patenaude (4,867,050), which discloses substantially all of the claimed limitations, but does not specifically recite,

6. The barbecue cooking device according to claim 5, characterized in that the bottom wall of the burner covers more than 75% of the surface area of the base wall.

12. The barbecue cooking device according to claim 1, characterized in that

said angle is 120 degrees.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the claimed values into the invention disclosed by Patenaude, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable values or ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233; *In re Swain*, 156 F.2d 239.

Response to Arguments

7. Applicants' arguments with regard to the rejected claims, filed December 22, 2006, have been considered, but are not deemed fully persuasive.
 - a. Applicant asserts that the '050 patent does not describe or suggest the combustion chamber spanning the height of the casing. The examiner disagrees with applicant's assertion. First it should be noted that the term "spanning" has been given its broadest reasonable interpretation, which in this case is simply to extend or cover. Second, the claim does not require that the combustion wall span the entire height of the casing. Finally, even if such was recited in the claims, member 59 of the '050 patent constitutes part of the combustion chamber wall and therefore satisfies the alleged claim recitation.
 - b. The remainder of applicant's arguments involving the international preliminary examination authority have been considered, but are not deemed persuasive with regard to the instant application.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

March 14, 2007


Alfred Basichas
Primary Examiner